

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



IN THE MATTER OF:

| | | |
|-------------------------------------|---|-----------------------------|
| UNIT DETERMINATION FOR PROFESSIONAL |) | Case Nos. |
| SCIENTISTS AND ENGINEERS, |) | SF-PC-1001-H et al. |
| LAWRENCE LIVERMORE NATIONAL |) | |
| LABORATORY, OF THE UNIVERSITY |) | Request for Reconsideration |
| OF CALIFORNIA PURSUANT TO |) | PERB Decision No. 246b-H |
| CHAPTER 744 OF THE STATUTES OF 1978 |) | |
| (HIGHER EDUCATION EMPLOYER- |) | PERB Decision No. 246c-H |
| EMPLOYEE RELATIONS ACT) |) | |
| | | August 19, 1983 |

Appearances; Philip E. Callis, Attorney for California State Employees Association; Bonnie Kathleen Gibson and Lynne C. Hermle, Attorneys (Corbett, Kane, Berk & Barton), and James N. Odle, Associate Counsel for the Regents of the University of California.

Before: Tovar, Jaeger, Morgenstern, and Burt, Members.*

DECISION

On March 8, 1983, the Public Employment Relations Board (PERB or Board) issued a decision¹ under the Higher Education Employer-Employee Relations Act (HEERA)² determining which employees or classifications should be excluded as managerial

*Chairperson Gluck did not participate in this decision.

¹In the Matter of: Unit Determination for Professional Scientists and Engineers, Lawrence Livermore National Laboratory of the University of California, Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (3/8/83) PERB Decision No. 246b-H.

²The HEERA is codified at Government Code section 3560 et seq.

or supervisory in the professional scientists and engineers bargaining unit at the Lawrence Livermore National Laboratory of the University of California (UC). Thereafter, UC and the California State Employees Association (CSEA) each filed a request for reconsideration of the Board's exclusionary decisions relating to supervisors. Neither party requested reconsideration of the managerial exclusions.

More specifically, UC claimed that the Board misinterpreted UC's evidence submitted in the form of declarations for the purpose of establishing a prima facie case for the exclusion of numerous supervisors. The procedure regarding declaration evidence was previously described in PERB Decision No. 246b-H, supra. UC stated that the Board's alleged misinterpretation resulted from both errors of fact and law. UC also claimed that the Board violated UC's due process rights by giving undue weight to the few counter-declarations submitted by CSEA.

CSEA, in its request for reconsideration, presented allegedly "newly discovered" evidence in the form of a declaration and urged the Board to find inadequate the UC declaration statements relating to the evaluation of probationary employees. In PERB Decision No. 246b-H, supra, the Board's decision in fact found such statements sufficient to establish supervisory authority.

Both the UC and CSEA requests for reconsideration are denied for failure to show "extraordinary circumstances" as

required by PERB rule 32410.3 The Board fully considered the substance of the UC declarations and CSEA counter-declarations and the due process concerns raised by UC in its initial exclusionary decision.

3pERB rules are codified at California Administrative Code, title 8, section 31001 et seq.

Rule 32410 provides:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and 5 copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

(b) Any party shall have 20 days from service to file a response to the request for reconsideration. An original and 5 copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the response pursuant to Section 32140 are required.

(c) The filing of a request for reconsideration shall not operate to stay the effectiveness of a decision of the Board itself unless otherwise ordered by the Board itself.

The Board determined that the evidence was to be "conservatively approached." UC was required to satisfy its burden to establish a prima facie case for exclusion of each employee it claimed to be supervisory. However, the declarations submitted by UC generally contained merely conclusory statements which lacked sufficient detail which would have assisted the Board in understanding the true role of these employees in hiring, transfers, promotions, discipline, grievance resolution and other supervisory functions. In March 1983, faced with these declarations, and in the midst of a process that had begun in July 1978, the Board rendered its decision. In reviewing the submitted declarations, the Board was able to find sufficient supervisory duties only among those employees who were responsible for performance evaluations which were critical to a determination whether probationary employees would be retained or discharged from employment.

The CSEA request for reconsideration which questions the Board's findings regarding performance evaluations certainly details the type of evidence that both parties might have submitted in declarations containing specific factual allegations. However, the facts set forth in CSEA's request are not newly discovered as CSEA could well have presented such facts before PERB Decision No. 246b-H, supra.

For the foregoing reasons, the requests for reconsideration submitted by UC and CSEA are denied.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the requests for reconsideration of the supervisory exclusions from the bargaining unit of professional scientists and engineers at the Lawrence Livermore National Laboratory of the University of California, filed by the University of California and the California State Employees Association, are DENIED for failure to show extraordinary circumstances.

By the BOARD